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May 16, 2000

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Case Control Unit
Attn : STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of the Secretary

MAY 16 2000

Part of
Public Record

Dear Mr. Williams:

Enclosed is an original hard copy and 3.5 inch diskette file of my Statement in the matter of STB Ex Parte No. 582 (Sub-No. 1) - Major Rail Consolidation Procedures. A duplicate was also sent this afternoon by facsimile to your attention.

Please continue to advise my office of all further proceedings in this matter.

Sincerely,

JOHN J. LaFALCE
Member of Congress

L:mc

Encs.

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THE SURFACE TRANSPORTATION BOARD
TUESDAY, MAY 16, 2000

STATEMENT

Hon. JOHN J. LaFALCE
Member of Congress - 29th District of New York

EX PARTE NO. 582 (Sub-No. 1)
Major Rail Consolidation Procedures

ENTERED
Office of the Secretary

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I represent the 29th District of New York State, which includes some or all of Niagara, Erie, Orleans, and Monroe Counties. Within this district are three international border crossings with Canada that in 1998 collectively supported $60 billion in total international goods trade, making it the second largest land port in the country. In addition, this border supports $26 billion in service related international trade, making it the source of $86 billion in total international trade.

On June 3, 1998, I testified before the STB about the impact the Conrail transaction would have on Western New York. I stated that the Niagara Frontier is one of the largest rail markets in the nation, a region that generated $500 million in annual freight revenue in 1995. More importantly, I declared that the lack of rail competition has stifled industrial manufacturing in this area, and I believe across the country.

On March 7, 2000, I testified [in the matter of Ex Parte No. 582] in support of a timely and fair review of the Canadian National Railway (CN) proposed merger with the Burlington Northern Santa Fe Railway (BNSF). Despite my comments, and the comments of many others in support, the STB has decided to impose a 15-month moratorium on this merger while it reviews its criteria for merger evaluation.

THE CN/BNSF MERGER

While I support the STB in its efforts to improve rail merger review, I am equally supportive of CN/BNFS's continuing pursuit of their merger. I find that the STB acted without statutory authority, and in an arbitrary and capricious manner, in acting to delay review.

It is imperative that all mergers be judged on their own merits, not on the shortcomings of previous mergers, in a process that is timely and fair, and that fully considers all potential economic ramifications.

The STB claims that its quick decision to impose a 15-month moratorium, after extensive hearings on the future of the railroad industry, is intended to provide time to rewrite and update the rules governing such mergers. But its effect is to keep the CN and BNSF railroads from even filing an application to have their proposed merger considered. The reality is the moratorium harms the residents of Western New York whose livelihood depends on goods shipped by rail and services dependent on the rail system.

Rail competition is critical to the long-term health of this burgeoning trade and, in turn, to the economic development of our region. A CN/BNSF combination would provide needed rail competition in upstate New York, and could enable Western New York to become the eastern hub for the combined railroad.

But the STB's decision has put a hold on all this for at least fifteen months, and perhaps permanently.

The STB's moratorium on all proposed rail mergers is a cautious approach partly based on the fact that many consumers are still recovering from service delays and disruptions that have followed the Union Pacific-Southern Pacific merger and the CSX and Norfolk Southern takeover of Conrail. These are serious matters, of course. But is it fair to put all other mergers on hold because these two have not been accomplished as well as they should have?

Doesn't this put the power to delay in the hands of those who would be in competition with the proposed new railroad? In fact, before the announced moratorium, a full page ad appeared in the *Washington Post*, paid for by Norfolk Southern, CSX, Union Pacific, and Canadian Pacific, opposed to the merger. These self-interested railroads seem more concerned about blocking possible competition than about addressing the problems in Buffalo and nationwide.

I also wonder why the STB needs a full 15 months to rewrite its merger rules before it can even consider examining the CN/BNSF proposal. Surely the Board can rewrite its rules and consider the CN/BNSF application at the same time. The STB has dealt with other major rail policy issues in far less than 15-months. It took only seven months to write new rules on how to consider cases concerning rail market dominance and service problems.

In short, the STB should consider this merger now, not 15-months from now. It should ask whether it promotes competition enabling U.S. (and Canadian) manufacturers to compete more effectively in the global marketplace. The STB should insist that railroads make substantial and enforceable commitments to repair and develop the rail network that American manufacturing relies upon. And the STB should look at how the merger would impact the entirety of the North American rail system.

And if it finds, as I believe it will, that the CN/BNSF proposal enhances competition and strengthens our nation's rail system, it should act favorably and expeditiously on the proposed merger.

Under its present approach, however, the STB isn't even asking any questions about the CN/BNSF combination proposal. By denying the filing of the railroads' combination application, the STB isn't even permitting CN and BNSF -- not to mention the shippers who depend on rail service and others who undoubtedly have opinions, pro and con -- to make their case.

Western New York's economy depends on rail traffic. Jobs rely on an efficient rail industry -- and that, in turn, depends on efficient regulation. Those whose livelihood depends on goods and services shipped by rail can disagree about whether further consolidations in the railroad industry will alleviate service delays and disruptions. But the STB should hear them. The STB is obligated to fulfill its responsibilities under the law.

MERGER REVIEW GUIDELINES

With that said, I would like to share my thoughts on any new regulations that will apply to future railroad mergers. In considering any new merger, the STB should examine the following:

1. **The Increasingly Global Economy**
   As the world economies become more interdependent, federal policy should promote efficiencies and growth in all sectors of the national economy.

2. **The Promotion of Competition**
   Competition should be improved by any means to stimulate the nation's economy and position manufacturing sectors to compete in the global marketplace.

3. **Rail Infrastructure**
   Deficiencies need to be a top priority of any review. Railroads should make substantial and enforceable commitments to repair and develop the rail network that every American manufacturer relies upon with significant contribution from local communities.

4. **Intermodal Expansion**
   Intermodal design can reduce transportation delays, decrease costs, protect the environment, and streamline manufacturing.

5. **Implementation of Automatic Penalties for Service Failures**
   Rail service should be guaranteed. Penalties for failure to meet professional standards, expected in every other major industry, will ensure reliable rail service, despite the existence of local monopolies.

I - THE INCREASINGLY GLOBAL ECONOMY

US companies exported $157 billion to our largest trading partner, Canada, a nation of only 30.5 million people. Worldwide, the US exported $958 billion in goods and services in 1999, up 2.6% from 1998. Clearly, domestic economic growth is tied to international trade.

The economy of Western New York continues to struggle. This area has seen its manufacturing base erode steadily since the 1960's, losing over 50,000 manufacturing jobs since 1980 alone. Nevertheless, manufacturing today still accounts for 18% of local employment.

The most promising growth sectors of the local economy are international trade and truck distribution and warehousing, due primarily to the geographic proximity to Canada and its largest city, Toronto. Rail competition is critical to the long-term expansion of trade and truck distribution.

A study by the State Assembly's Western New York Majority Delegation, entitled "The Regional Economic Profile - Western New York," dated February, 2000 [which can be found at http://www.assembly.state.ny.us/Reports/westernny.pdf] sites the following:

- The value of exports from the Buffalo / Niagara Falls Metropolitan area doubled between 1993 and 1998, from $1.1 billion to $2.2 billion
- The Export Sector of the economy now accounts for 12% of all wages in the region.
- Exports to Canada more than tripled from $0.6 billion to $1.9 billion in 1997, and Canada is now the destination for 66% of Western New York's exports.
- The five-year growth of exports for Buffalo-Niagara Falls is an astounding 96% - leading Detroit (61%), Cleveland (49%), and Pittsburgh (36%) over the same period.
- There is a significant growth in the amount of goods produced by small and mid-sized Canadian firms that are now consolidated at distribution centers in WNY for U.S. distribution.

It goes without saying that any adjustment to regulation of an industry, such as rail, that is relied upon by so many businesses for basic supply and distribution, should not be executed without careful contemplation of the consequences of international trade.

II - THE PROMOTION OF COMPETITION

Competition should be enhanced whenever possible to stimulate the nation's economy and position manufacturing sectors to compete effectively in the global marketplace. Rail competition is critical to the long-term health of this burgeoning trade and, in turn, to the economic development of every region.

The acquisition of Conrail by CSX and Norfolk Southern has done little to enhance competition in Western New York because the STB has refused to declare the region a "shared asset area" (where two corporations can actively compete for business), despite doing so elsewhere. This has ensured that this region, which suffered from a single provider monopoly under Conrail, will remain anti-competitive with two dominant providers, CSX and Norfolk Southern, continuing this monopoly through interwoven, but completely independent service.

In contrast, the potential merger of CN/BNSF would provide needed rail competition in upstate New York, and could enable Western New York to become the eastern hub for the combined railroad.

The Erie-Niagara Rail Steering Committee (ENRSC) is an organization of Upstate New York interests who have joined the State of New York Department of Transportation to sue CSX, the STB, and others to enforce the commitments made pursuant to the Conrail transaction. The case is currently on appeal to the US Court of Appeals for the 2nd Circuit. (See *The Erie-Niagara Rail Steering Committee et. al vs. the Surface Transportation Board et. al.* 98-4285(L)). The ENRSC is appealing *in part* the STB decision approving the Conrail acquisition on grounds that the STB acted arbitrarily and capriciously in not providing a competitive rail environment for Western New York. The Court is expected to hear oral arguments shortly, with a decision expected in early fall.

It is interesting to note that the State and local communities are adversaries of both the STB and the largest railroads. The STB's position is a quandary to me. Some have argued that shared asset areas are not in the best interest of shippers. While I strongly disagree with that notion, I feel just as strongly that any decision that has so great an impact on a local economy should be made by local officials who are in touch with the regional economy, and not imposed upon an entire area by a federal agency. The fact that the region's economy continues to suffer and that the federal response has been to conduct a redundant three-year study and neglect needed bridge development, in lieu of decisive and immediate action, is preposterous.

The aim of any monopolist is to enforce higher-than-market prices, while providing substandard service. In response to repeated and dire concerns of local shippers in the Buffalo area, the STB has instituted a lengthy three-year rail rate study of Western New York, but this has no immediate effect. These shippers already know the conclusion of this study -- rates are too high! While other areas enjoy shared asset areas, this region is not permitted such an opportunity.

Any merger that increases competition benefits the national economy. Accordingly, the STB should take competition enhancement into serious account.

III - RAIL INFRASTRUCTURE

Conrail neglected rail infrastructure in New York, and we are now paying the price.

Since the merger, there has been a rerouting of traffic; that has resulted in a 30% increase in traffic over the Buffalo River at the CP Draw bridge -- to 100 trains per day. As part of the Conrail acquisition, Norfolk Southern committed to spending $6.2 million to bypass CP Draw because it was universally recognized as a choke-point. However, those plans have yet to be implemented A fixed second crossing of the Buffalo River at the CP Draw site must be completed immediately.

Norfolk Southern should be commended for its $13 million investment at the Bison Yard, as CSX should also be commended for new improvements that have begun to alleviate local problems. However, the Bison Yard is fed by the track across the Buffalo River. Therefore, without a solution to the CP Draw site, the Bison Yard and other enhancements will be wasted.

I also initiated a survey of Erie and Niagara County rail infrastructure needs, including road crossings and damaged bridges that require attention. This report was presented to executives at CSX, Norfolk Southern, and directly to STB Chairman Linda Morgan during a series of hearings in the Buffalo area. Unfortunately, this proposal has been given short shrift by local CSX representatives and has received no other response to date by either company's national representatives, despite the fact that I again pointed this out to the STB at the hearing on March 7, 2000.

The State of New York may be discussing the concerns of CSX and NS regarding state taxes that the railroads claim are excessive. I find it disappointing that this process is neither open, nor contains any apparent long-term assurances that in return for tax relief, there would be some commitment by the railroads to serious investment in rail infrastructure in all areas of New York.

Further raising my suspicions, a recent Federal Railroad Administration report indicates that CSX has not maintained its 23,400 miles of rail lines adequately, exposing citizens and rail workers to injury, and imposing further burdens on US commerce.

Since the initial discussions regarding the Conrail transaction, I have found that there is little to no ability to compel major railroads to improve infrastructure in ways that would either encourage local economic development or improve safety for local communities.

It is unfortunate that a society that is so dependent on its rail system for support of manufacturing (essential for both domestic production and export generation) fails to make rail investment a higher priority. I note that the US Department of Transportation budget proposal for FY2001 is $55 billion, which includes $30 billion for the Federal Highway Administration. This is a mere 20 to 25 percent of the funding spent on the nation's roadways, as states and localities spend three times more. In fact, the State of New York alone has allocated $17.1 billion for a five-year transportation spending plan that will significantly develop Route 17 into I-86 and Route 219, principally for truck use. At the same time, there is little or no explicit public funding for railroad improvements, even for a single $15 million rail bridge, CP Draw, a congestion point for the entire region.

This dearth of public funds for rail maintenance and development is theoretically compensated for by private investment. However, the experience of Upstate New York indicates that this does not permit communities to participate in the rail investment decisions in any meaningful way.

Railroad corporations inevitably maintain only highly profitable lines, mainly routes of the largest manufacturers, and react slowly or ignore smaller manufacturers with no regard to their contribution to the economy as a whole. If local economic development officials had direct control, or even some input into rail investment, I believe development would be considerably different.

Furthermore, it is increasingly clear that truck traffic is becoming a significant burden on our highways and roads. In addition to the sizable funds for highway infrastructure in federal, state, and local budgets already sited, excessive trucking has a significant environmental and social impact as well.

The long lines of trucks at the Peace Bridge are just one example. H. Con. Res. 306, the Safe Highways Resolution supports a freeze on longer combination vehicles and current federal limitations on truck size and weight. Heavier trucks and longer vehicles would lead to more highway fatalities. In addition, there is an ongoing fear that substandard Mexican trucks will be allowed free reign on our highways, causing further accidents. There is also an initiative to increase the allowable time per day a truck driver may work, from ten to twelve hours. This industry is so overburdened at the moment, that most long haul carriers experience 100% annual driver turnover. I have heard from numerous constituents on these issues, some who are even afraid to drive on the highways because there are so many trucks.

In short, there is far too much dependence on trucking and too little attention paid to rail development.

IV - INTERMODAL EXPANSION

Put simply, the Western New York/Southern Ontario region is becoming an intermodal center for distribution throughout North America. The encouragement of intermodal investment, uniform standardization, and automation should be a federal priority.

The CN/BNSF merger has the potential to enhance Western New York's ability to distribute goods throughout North America. The development of an extensive intermodal facility by CN/BNSF could enable Western New York to become the eastern hub for the merged railroad within its new infrastructure.

If this merger is ever approved, CN/BNSF's initial plan is to invest $5 million in an intermodal facility in South Buffalo. This is very significant. Essentially, rail cars will terminate at the site, where truck-to-rail and rail-to-truck transfers will be readily available. Therefore, a shipper who can truck goods to the new intermodal facility will have access to rail competition using CN/BNSF. Furthermore, some current captive shippers will be able to use CN/BNSF if they choose, or will eliminate the need to switch cars between rail companies and thus reduce or eliminate stifling switching charges.

On April 26, 2000, I attended the grand opening of the Commercial Vehicle Procession Center (CVPC) at the Peace Bridge in Fort Erie, Canada. The CVPC is just one more important piece in the region's intermodal development and a major addition to the international trade infrastructure.

In Upstate New York, we all recognize the significance of the Peace Bridge. The first span across the Niagara River was completed in 1848. The Peace Bridge, which takes its name from the tranquility and friendship that has existed between the US and Canada since 1812, was dedicated in 1927. Over the last 75 years, the bridge has become a symbol of our mutual prosperity. By last year, 1.48 million commercial vehicles crossed the Peace Bridge, up 16% from 1998. The federal government must do whatever it takes to make all border crossing seamless.

The CVPC will make the Peace Bridge efficient and expeditious for truck traffic, so that the entire region continues to benefit from the global economy. It has been designed to expedite trucks with proper documentation and take advantage of new technology and automation. It will also encourage truckers to get their paperwork in order before they get here. One in four of the 2,800 trucks per day that cross the Peace Bridge arrive with incomplete paperwork and slow those that are prepared. The CVPC has already increased the number of trucks cleared immediately through the border from 66% to 84%. With increased awareness and compliance, that number should only improve.

Long truck lines and clogged rail lines in Western New York are a sore topic, and I agree that these problems need attention. But long truck lines at the Niagara Frontier bridges and busy railroads mean busy manufacturers, people with steady work - even overtime - and prosperity on both sides of the border. Handling more trucks and rail traffic are problems that I welcome.

Border crossings have other issues that need attention, such as more customs agents and Buffalo's desperately needed bridge expansion project. However, it is clear that emphasizing intermodal synergies will lead to economic growth.

A case in point would be a small manufacturing company in Tonawanda, New York, Fulfillment Systems International (FSI). FSI's President Patrick Whalen wrote to me in support of the CN/BNFS merger. Mr. Whalen points out that during a six-week stretch, FSI required 135 tractor trailers to distribute computer monitors and printers for just one of 600 clients. This product entered North America through the Port of Vancouver, BC and traveled by rail to the Toronto area. From that point, the only means to ship these goods was by truck, across the Peace Bridge to the Tonawanda facility. Had the intermodal center in South Buffalo been open, this would have obviated the need for such lengthy trucking, bridge crossing, and saved everyone involved time and money.

V - IMPLEMENTATION OF AUTOMATIC PENALTIES FOR SERVICE FAILURES

The recent Conrail transaction has been very disruptive to the manufacturers in my community. These rail-dependent businesses include Dunlop, DuPont, Olin, OxyChem, Ford, General Motors, Delphi, 3M, General Mills, and American Axle, to name a few. In fact, since June, these companies have significantly reduced capacity, relocated production, and switched a significant portion, if not all, shipments to trucks.

Regionally, the National Industrial Transportation League survey, presented in January, at the Conrail Transaction Council in Philadelphia, concluded the following:

- CSX service is worse for 88% of respondents now, compared to service prior to the Conrail transaction on June 1, 1999;
- Norfolk Southern service is worse for 90% of respondents now, compared to service prior to the Conrail transaction on June 1, 1999;
- 100% of respondents reported that at some point, this transaction has forced a switch to more expensive truck shipping; and
- Western New York and the CP Draw congestion were mentioned specifically among the worst areas impacted by the transaction.

This is simply unacceptable. Despite repeated attempts to address the concerns of my constituents, and in cooperation with other House and Senate Members and various federal, state, and local agencies, I continue to demand that CSX and Norfolk Southern address this situation. However, to date I cannot report much progress. The STB is fighting a suit to declare the region a shared asset area, has initiated a three-year study, and has not accomplished what local officials are demanding - improved service, lower rates and more competition.

I strongly support efforts to hold railroads financially accountable for service failures. Real economic compensation, and not a maze of administrative requirements, should be the standard practice. It is interesting to note that major railroads have contractually committed to as much in negotiations with major shippers, who have the ability to make such demands. Unfortunately, it is smaller shippers who are most affected by inconsistent service, who have the least ability to exact compensation. If railroads are able to guarantee service or compensation for their large customers, it seems appropriate for these guarantees to be administratively enforced for all shippers by the STB.

CONCLUSION

It is time for a new federal emphasis on rail policy. New merger standards should include consideration of the global economy, the promotion of competition, rail infrastructure improvements, intermodal expansion, and service enforcement.

As the United States continues this inevitable integration with the world economy, it is imperative that our nation's railroads are run efficiently and are supported with considerable investment. Our national economy depends on it.